

# **ENVIRONMENTAL HEALTH CODE**

## **Chapter 8**

### **Smoking in Public Places**

## **SECTION 1: Title**

This chapter 8 may be cited and referred to, and shall be known as, the “Smoking in Public Places Regulations.”

## **SECTION 2: Authority and Purpose**

- A. The Tacoma-Pierce County Board of Health (Board of Health) enacts the regulations set forth in this chapter under the general authority of Article 11, §11 of the Washington Constitution and RCW 70.05.060, and under the specific authority set forth in RCW 70.160.080.
- B. The purpose of these regulations is to provide for and promote the health, safety, and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of person who will or should be especially protected or benefited by this chapter. The provisions of this chapter shall be liberally construed for the accomplishment of its purposes.
- C. It is the specific intent of this chapter to place the obligation of complying with its requirements upon the owner of each establishment within its scope, and no provision nor term used in this title is intended to impose any duty whatsoever upon the Board of Health, the Tacoma-Pierce County Health Department (Health Department), or any of its officers or employees, for whom the implementation or enforcement of this chapter shall be discretionary and not mandatory.
- D. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the Board of Health, the Tacoma-Pierce County Health Department (the Health Department), or any of its officers or employees, for any injury or damage resulting from the failure of any person subject to this chapter to comply with this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter of the part of the Board of Health, the Health Department, or its officers or employees.

## **SECTION 3: Findings**

The Board of Health recognizes that exposure to secondhand smoke is known to cause cancer in humans and is a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease. Citizens are often exposed to secondhand smoke, and are likely to develop chronic, potentially fatal diseases as a result of such exposure. Due to the health hazards that secondhand smoke poses to those exposed, the Board of Health adopts these regulations in order to protect the health and welfare of all citizens, including workers in their places of employment.

## **SECTION 4: Administration**

Chapter 70.160 RCW, as now or hereafter amended, is hereby adopted and incorporated by reference.

## **SECTION 5: Definitions**

As used in this chapter, the following terms have the meanings indicated unless the context clearly indicates otherwise.

- A. "Employee" means any individual who is employed by an employer in return for the payment of direct or indirect monetary wages or profit, any individual who volunteers his or her services to an employer for no monetary compensation, or any individual who performs work or renders services, for any period of time, at the direction of an owner, lessee or other person in charge of a place that is subject to the provisions of this chapter.
- B. "Employer" means any person, sole proprietorship, partnership, corporation, association, nonprofit organization, or other entity that pays another person direct or indirect monetary wages or profit in consideration for such other person's providing services on the premises of the employer, or who otherwise directs another person to perform work or render services on the premises of the employer. "Employer" shall also mean the owner(s) of a sole proprietorship, partnership, corporation, association, nonprofit organization, or other business entity.
- C. "Open to the public" means explicitly or implicitly authorizing or inviting entry or use by the public. Factors relevant to the determination of whether a portion of a building or an affiliated outdoor eating or drinking area, other than a private residence, is "open to the public" include, but are not limited to:
  - 1. Whether the owner, lessee or person in charge permits or invites entry by individuals other than employees who perform work or persons who meet selective, restrictive and limited criteria for entry;
  - 2. Whether the owner, lessee or person in charge directs, authorizes, or otherwise engages in advertising or promotion to the public to encourage occupancy or use;
  - 3. Whether signage is present indicating that the building, a portion thereof, or an affiliated outdoor area is open to the public; or
  - 4. Whether the owner, lessee or person in charge also owns, operates, or leases a retail business that is open to the public, the retail business is in the same building where smoking occurs and the area where smoking occurs is open to the customers of the retail business.

- D. "Person" means any natural person, individual, corporation, unincorporated association, proprietorship, firm partnership, joint venture, joint stock association, or other entity of business of any kind.
- E. "Place of employment" means any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to, entrances and exits to the places of employment, and including a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open and ventilation intakes that serve an enclosed area where smoking is prohibited, work areas, restrooms, conference and classrooms, break rooms and cafeterias and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a "place of employment."
- F. "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance, as set forth in RCW 70.160.020, of twenty-five feet from entrances, exits, windows that open and ventilation intakes that serve an enclosed area where smoking is prohibited. A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises.

"Public place" includes, but is not limited to, schools, elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests. "Public place" does not include a private residence. This chapter is not intended to restrict smoking in private facilities that are occasionally open to the public except upon the occasions when the facility is open to the public.

- G. "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, hookah, or any other lighted smoking equipment.

#### **SECTION 6: Smoking Prohibited**

No person may smoke in a public place or in any place of employment.

## **SECTION 7: Owners, Lessees to Post Signs Prohibiting Smoking**

Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place regulated under this chapter shall prohibit smoking in public places and places of employment and shall post signs prohibiting smoking as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place.

## **SECTION 8: Application to Modify Presumptively Reasonable Minimum Distance**

- A. Owners, operators, managers, employers or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty-five feet is a reasonable minimum distance by making application to the health officer. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes or other factors, smoke will not infiltrate or reach the entrances, exits, open windows or ventilation intakes or enter into the public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.
- B. All persons seeking to modify the presumptively reasonable twenty-five foot distance shall use the application form provided by the Health Department. An application shall not be complete unless it is accompanied by an application fee in the amount set forth in the most recent Environmental Health Program Fee Schedule approved by the Board of Health.
- C. Any variance from the twenty-five foot rule described in this section shall be subject to annual review and approval by the Health Department and the payment of fees associated therewith.

## **SECTION 9: Enforcement**

- A. The health officer is authorized to enforce the restrictions and requirements of this chapter in accordance with the provisions of Chapter 1 of the Environmental Health Code and consistent with subsections B and C below.
- B. When violations of this chapter occur, a written warning shall first be given to the owner or other person in charge. Any subsequent violation is subject to a civil penalty of up to one hundred dollars (\$100.00) and a reinspection fee in accordance with Section 10 of this chapter. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.
- C. In the event a hearing is requested pursuant to Chapter 1, Section 13 (Appeals to the Hearing Examiner) of the Environmental Health Code, the prevailing party shall be entitled to

reimbursement of attorney fees and costs, including fees and costs incurred in any subsequent appeal of the Hearing Examiner's decision, if any.

#### **SECTION 10: Reinspection**

- A. The health officer is authorized to charge a fee for any reinspection of a place regulated under chapter 70.160 RCW or these regulations when an initial inspection results in the finding of a violation and the reinspection also results in the finding of a violation of chapter 70.160 or these regulations. The obligation to pay reinspection fees is in addition to any civil penalties that may be levied pursuant to Section 9, above.
- B. The owner, lessee or other person in charge of a public place or place of employment regulated under chapter 70.160 RCW or this chapter shall pay reinspection fees as set forth in the most recent Environmental Health Program Fee Schedule approved by the Board of Health.

#### **SECTION 11: Severability**

The provisions of this chapter are hereby declared to be separate and severable. If any section, sentence, clause or phrase of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, sentence, clause, or phrase of this chapter.